

REMARKS

Claims 1, 3-10, 12-28, 34-41 and 43-49 are pending in this Application, of which claims 17-28, 34-40, 43 and 44 have been withdrawn from consideration. Claims 8, 9 and 16 are currently amended to address certain informalities, and independent claims 1, 41 and 49 are amended for clarity. Adequate descriptive support for the present amendment should be apparent throughout the originally filed disclosure as, for example, ¶ [0047] of the corresponding US Pub. No. 20070226749. Applicants submit that the present amendment does not generate any new matter issue.

Interview Summary

The Applicants respectfully object to the Examiner-Initiated Interview Summary dated October 5, 2010 as not being reflective of the general nature of what was discussed during the telephonic interview between the Examiner and listed participant representing the Applicants. Particularly, the Examiner's specific interpretation or understanding of the claimed invention is not shared by the listed participant representing the Applicants.

Claim Objections

Claims 8, 9 and 16 are objected to due to certain informalities.

In response, claims 8, 9 and 16 have been amended to address the concerns raised by the Examiner.

Claims 1, 3-10, 12-16, 41 and 45-49 are rejected as obvious under 35 U.S.C. §103(a) based on Rao et al. (US 6,978,453, “Rao”) in view of SyncML Meta-Information DTD (“DTD”) and Szeto (US 7,188,143, “Szeto”).

In stating the rejection, the Examiner asserted that “the combination of the references is functionally equivalent to the core/heart of applicant’s invention.” Applicants respectfully traverse this rejection for at least the reasons stated below.

The BPAI in, e.g., *Ex parte Kershaw* (citation omitted), has recently ruled against using “functional equivalents” doctrine. Moreover, according to MPEP 2144.06, it is stated that in order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant’s disclosure or the mere fact that the components at issue are functional or mechanical equivalents. *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958) (The mere fact that components are claimed as members of a Markush group cannot be relied upon to establish the equivalency of these components.); *Smith v. Hayashi*, 209 USPQ 754 (Bd. of Pat. Inter. 1980) (The mere fact that phthalocyanine and selenium function as equivalent photoconductors in the claimed environment was not sufficient to establish that one would have been obvious over the other).

As such, it is respectfully submitted that the Examiner’s reliance on functional equivalency is unwarranted.

Additionally, independent claims 1, 41 and 49 have been amended to clarify that the electronic device receives an executable command to execute first data without specifying the execution of an unidentified executable for the first data. In other words, the executable command does not specify which executables should be used and the meaning of the command depends upon the content type of the data which it identifies.

The above discussed amended claimed element of the executable command without specifying execution of an unidentified executable, was simply not known. Also, there is no reason to substitute the claimed elements for the components disclosed in the applied references, particularly since the components in the applied references are not concerned with any executable command that does not specify which executables should be used and whether the meaning of the command would depend on the identified content type.

Therefore, the present application, as amended, overcomes the rejection of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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